

Practitioner's Docket No. 40403

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **William M. Drake**

First Named Inventor: **William M. Drake**

Application No.: **10/823,438**

Group No.: **3635**

Filed: **04/12/2004**

Examiner: **Basil S. Katcheves**

Confirmation No.: **4852**

For: **Improved Apparatus and System for Concrete Surface Repair,  
and Method**

**Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450**

Sir:

**APPLICANT'S RULE 131 DECLARATION**

I, William M. Drake, Applicant in this case, make this declaration in support of my Response to Non-Final Office Action mailed by the Patent Office on March 14, 2008.

I am a co-inventor of U.S. Patent No. 6,752,566.

I initiated civil litigation in the United States District Court, Eastern District of California in Case No. 2:05-CV-01503-MCE-PAN, styled *William M. Drake v. William Bruce Smith* (the "Litigation") to correct inventorship for U.S. Letters Patent No. 6,752,566. As the result of my legal action, judgement was entered in the Litigation including *inter alia* correction of U.S. Letters Patent No. 6,752,566 to include William M. Drake as co-

inventor. Attached to this declaration as Exhibit "A," and incorporated by reference for all purposes, is a true and correct copy of judgment in the Litigation entered July 17, 2006.

I am the sole owner of the entire right, title and interest in and to U.S. Letters Patent Nos. 6,752,566 and 6,595,718. Attached to this declaration as Exhibits "B" and "C," respectively, and incorporated by reference for all purposes, are true and correct copies of the Patent Office assignment records indicating recordation of my rights as assignee in and to U.S. Letters Patent Nos. 6,752,566 and 6,595,718.

Under my direction and control, adjustable frame assemblies, as disclosed in the U.S. Letters Patent No. 6,752,566, and solid plate assemblies, as disclosed in the above-identified U.S. non-provisional Patent Application No. 10/823,438, were assembled and tested.

Attached to this declaration as Exhibit "D," and incorporated by reference for all purposes, is a true and correct copy of my summary of the results of these tests. As can be seen from Exhibit "D," the solid plate assemblies provide several advantages over the adjustable frame assemblies for the removal and replacement of broken concrete on highways.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these

statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Dated: June 4, 2008.

/William M. Drake/  
William M. Drake

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**JUDGMENT IN A CIVIL CASE**

**WILLIAM M. DRAKE,**

**CASE NO: 2:05-CV-01503-MCE-PAN**

**v.**

**WILLIAM BRUCE SMITH,**  
\_\_\_\_\_

**XX** — **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED**

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE  
COURT'S ORDER OF 7/17/06**

**Marianne Matherly  
Acting Clerk of Court**

**ENTERED: July 17, 2006**

by: /s/ J. Donati  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM M. DRAKE,

No. 2:05-cv-1503-MCE-PAN

Plaintiff,

v.

ORDER

WILLIAM BRUCE SMITH,

Defendant.

Plaintiff's Motion for Entry of Default Judgment came on regularly for hearing June 8, 2006. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 72-302(b)(17) and 28 U.S.C. § 636(b)(1).

On June 13, 2006, the magistrate judge filed Findings and Recommendations herein which were served on all parties and which contained notice to all parties that any objections to the Findings and Recommendations were to be filed within ten (10) days. Neither party has filed objections to the Findings and Recommendations.

1 The Court has reviewed the file and finds the Findings and  
2 Recommendations to be supported by the record and by the  
3 magistrate judge's analysis. Accordingly, IT IS HEREBY ORDERED  
4 that:

5 1. The Findings and Recommendations filed June 13, 2006,  
6 are adopted in full;

7 2. Plaintiff's Motion for Entry of Default Judgment is  
8 granted; and

9 3. Judgment is entered against defendant William Bruce  
10 Smith and in favor of Plaintiff. U.S. Letters Patent No.  
11 6,752,566 shall be corrected to include the name of the  
12 plaintiff, William M. Drake, as co-inventor consistent with the  
13 authority under 35 U.S.C. § 256.

14 DATED: July 17, 2006

15  
16 

17 MORRISON C. ENGLAND, JR.  
18 UNITED STATES DISTRICT JUDGE  
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## Assignments on the Web &gt; Patent Query

## Patent Assignment Abstract of Title

***NOTE: Results display only for issued patents and published applications.  
For pending or abandoned applications please consult USPTO staff.***

## Total Assignments: 2

Patent #: 6752566

Issue Dt: 06/22/2004

Application #: 10455117

Filing Dt: 06/04/2003

Publication #: 20030194272

Pub Dt: 10/16/2003

Inventor: William Bruce Smith

Title: EXO-LIFT

## Assignment: 1

Reel/Frame: 015127/0658

Recorded: 03/26/2004

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: WORKS R & D, INC.

Exec Dt: 03/08/2004

Assignee: WILLIAM BRUCE SMITH

1755 OAKBROOK COURT

YUBA CITY, CALIFORNIA 95993

Correspondent: WILLIAM B. SMITH

1755 OAKBROOK COURT

YUBA CITY, CA 95993

## Assignment: 2

Reel/Frame: 017176/0212

Recorded: 02/16/2006

Pages: 3

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: SMITH, WILLIAM BRUCE

Exec Dt: 02/14/2006

Assignee: DRAKE, WILLIAM M.

P. O. BOX 2380

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Correspondent: CHARLES L. THOEMING

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EXHIBIT "B"



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## Assignments on the Web &gt; Patent Query

## Patent Assignment Abstract of Title

***NOTE: Results display only for issued patents and published applications.  
For pending or abandoned applications please consult USPTO staff.***

## Total Assignments: 3

Patent #: [6595718](#)

Issue Dt: 07/22/2003

Application #: 09682546

Filing Dt: 09/19/2001

Publication #: [20030053861](#)

Pub Dt: 03/20/2003

Inventor: William Bruce Smith

Title: EXO-LIFT

## Assignment: 1

Reel/Frame: [013833/0696](#)

Recorded: 03/12/2003

Pages: 4

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: [SMITH, WILLIAM BRUCE](#)

Exec Dt: 03/03/2003

Assignee: [WORKS R & D, INC.](#)

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Correspondent: KOLISCH HARTWELL, P.C.

MARK D. ALLEMAN

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PORTLAND, OR 97204

## Assignment: 2

Reel/Frame: [015127/0658](#)

Recorded: 03/26/2004

Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: [WORKS R & D, INC.](#)

Exec Dt: 03/08/2004

Assignee: [WILLIAM BRUCE SMITH](#)

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YUBA CITY, CALIFORNIA 95993

Correspondent: WILLIAM B. SMITH

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YUBA CITY, CA 95993

## Assignment: 3

Reel/Frame: [017176/0212](#)

Recorded: 02/16/2006

Pages: 3

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: [SMITH, WILLIAM BRUCE](#)

Exec Dt: 02/14/2006

Assignee: [DRAKE, WILLIAM M.](#)

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# EXHIBIT "D"

## COMPARISON OF FEATURES

Characteristic Differences	Adjustable Beam Frame U.S. Patent 6,752,566	Solid Metal Plate U.S. Patent App. 10/823,438
Attachments To Slabs	Long coil rods through slots in double "C" channel beams	Short coil rods through holes in solid metal plate
Height Of Apparatus	2 feet to 3 feet	2 inches to 5 inches
Number Of Main Parts	At least 4 up to 20 plus	Always only one (1)
Coil Rod Diameter	Only one size - width of slot in double "C" channel beam	At least 3 sizes different sizes accommodated by appropriate inserts in the holes in the plates
Precise Location Of Slab Anchors	Difficult requirement to find weight balance - centroids - in irregular shapes of broken parts of slab. Must take weight distribution of broken parts into account.	Easy approximation of anchors - weight of broken part not critical. Just eyeball a geographic spread of anchors.
Holding Broken Parts Together	a). Problem of weight imbalance caused by imprecise centroids allowing canting of broken pieces, destroying integrity of mass. b). Torquing of beams due to heavy weight of concrete. Beam strength limited to weight and size that people can lift.	a). No open spaces. Full contact of mating surface between plate and broken slab. Integrity of broken slabs held together in all planes. b). No torquing issues as result.
Connection Pins Etc. To Hold Apparatus As One Piece	MANY	NONE
Handling And Ability To Keep Slab From Usual Belly Deflection (Sag) Or Movement Of Concrete Slab When In Transport And Replacement Mode	a). Belly sag of concrete requires beams to be too heavy for people to handle. Nature of beam is better as backbone support than main support. b). Heavier weight beams must be lifted by equipment, but still placed and handled by people.	Backbone ribs on back of plate counter belly sag allowing precise grout injection. No people lifting component, thus plate can be as heavy as needed. Heavy weight of plate is asset, offsetting uplift due to grout injection during slab replacement.
Time Needed To Anchor Broken Slab To Apparatus	3 to 6 hours (assembly of frame and precision location of anchor holes in irregular broken pieces of slabs).	1 +/- hours, no assembly, no precision anchor points - just guesstimate anchor points: make fluorescent marks, place holey metal plate over broken slab, drill anchor holes into concrete slabs through pre-made plate holes and set anchors.